DEPUTY PRESIDENT: The question is that Clause 17 do stand part of the Bill.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose the Clause.

The question that Clause 17 do stand part of the Bill was then put and carried and the clause added to the Bill.

ADJOURNMENT MOTION.

DEPUTY PRESIDENT: We will now proceed to the adjournment motion.

MR. S. J. NAIR (*Nedumangad*): Sir, in view of the supreme importance of the Bill under discussion and in view of the fact that the P. W. D. toll gates have been auctioned, I do not move my motion.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose, Sir.

DEPUTY PRESIDENT: I do not know how Mr. Sambasiva Aiyar can oppose, when the motion itself is not made. The motion was in an embryonic condition and it has not taken any shape.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): But the member withdrew it.

DEPUTY PRESIDENT: There is difference between motions 'withdrawn' and 'not moved'. The present motion has not been made. Mr. S. J. Nair has put it that this Bill is a very important one and that the matter which was the subject of the adjournment motion is no longer urgent. The motion for adjournment is an extraordinary remedy and Mr. S. J. Nair sought the permission of the House to move it. Anyway he does not make the motion. There the matter drops.

We will now proceed to the further consideration of the Bill.

Clause 18.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I beg to move the following amendment.

In Clause 18, line 4, add "together with interest thereon at six per cent. per annum from the date of the certificate" after the words "cash payment" and in line 5, substitute "to deposit the amount with interest as aforesaid" for "to make the deposit".

Such a provision existed in the original Bill and by oversight it has been left out. In Clause 17, it is stated that the Conciliation Officer will issue a certificate for the amount due to the creditor and that it shall be paid forthwith or deposited in court. The creditor who desires to take advantage of the certificate will naturally get a copy of the order and apply to the civil court for the money decreed in his favour The amount covered by the certificate will then be given to him that is what Clause 18 says. If the Conciliation Officer decides that a creditor is entitled to get Rs. 100 on a particular date, should not the creditor be allowed interest on the amount from that date? By oversight in the Select Committee, this provision was not put in the revised Bill.

DEPUTY PRESIDENT: You say that it was due to your own oversight.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I will say that the Select Committee did not consider this aspect of the matter.

When the creditor applies for the amount covered by the certificate the interest thereon from the date on which he was entitled to have it till the date of deposit in court must be paid to him. There is no reason why the creditor should lose the interest. I ask, why not grant the interest also for the money fixed according to the certificate, between the period of award and the period of deposit in court?

MR. T. S. JAYANTAN NAMPOOTIRI (*Travancore Jenmies, North*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I will formally oppose the amendment. I must concede that there is some reason behind the amendment proposed by Mr. Sambasiva Aiyar. I would however ask the House, at the same time to consider whether this is not a small matter. After all, the interest would never exceed that for a period of three months; at any rate it need not; because the deposit has to be made within a period of three months and it is open to the creditor to make the application immediately after the date of the certificate; if the creditor is vigilant enough he can go to the court at once and save his interest except that for three months. On the other hand, strictly speaking, it is correct to say that the deposit should carry interest from the date of the certificate to the date of the deposit.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Is not the creditor to express his consent for the money being deposited in court?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is what it comes to, and yet the creditor is denied the interest till the date of deposit.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Will not the granting of interest be an incentive to the creditor to keep him back from accepting the amount?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If such an idea will operate by reason of the fact of granting the interest, then the amendment may be voted down; but if interest is denied, it may operate as a check to a creditor to accept the certificate. That also may be considered.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): I oppose the amendment. The question of granting interest for the amount mentioned in the certificate was considered in the Select Committee and it decided that no interest need be given.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I challenge that statement, Sir,

DEPUTY PRESIDENT: This House has no right to consider whether the Select Committee considered it or not. Such discussions are beside the point.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Because Mr. Sambasiva Iyer referred to what transpired in the Select Committee, I also, being a member of the committee, had to say what transpired in

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[Pottayil S. Krishna Panickar.]

the committee. This granting of interest to the creditor will be a strong reason for him to litigate his claims in a court of law even though his conduct may not be quite justifiable. The creditor does not stand to lose. On this ground, I oppose the amendment. The concession that the legislature intends to give by Section 17 will be very much reduced and negatived.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I know what the Select Committee means by the expression "if the debtor were prepared to pay forthwith in cash in full settlement of all the debts" appearing in Clause 17?

DEPUTY PRESIDENT: I cannot permit Mr. Panickar to interpret what the Select Committee meant by that. There is the Report.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I know what is the meaning the member attaches to that expression?

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Whenever the creditor shows his willingness.

The amendment was put to the vote of the House and lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I demand a poll.

A poll was taken and the House divided as follows:—

AYES - 8.

1 Mr. S. Chattanatha Karayalar
2 ,, K. C. Karunakaran
3 ,, K. P. Krishna Menon
4 ,, Rao Sahib S. Paramesvara Aiyar
5 Mr. Changanachery K. Paramesvaran Pillai
6 ,, R. Sambasiva Aiyar
7 ,, M. Sivatanu Pillai
8 ,, S. Thiraviam Nadar

NOES—35

1 Mr. V. T. Chacko
2 ,, A. S. Damodaran Asan
3 ,, K. R. Elenkath
4 ,, Antony George
5 ,, K. George
6 ,, M. Govinda Pillai
7 ,, M. Mahomed Haneef
8 ,, S. J. Nair
9 ,, N. John Joseph
10 ,, J. M. Joseph
11 ,, T. C. Joseph
12 ,, K. N. Kesava Pillay
13 ,, T. T. Kesavan Sastri
14 ,, K. M. Krishnan
15 ,, Pottayil S. Krishna Panickar
16 ,, N. K. Krishna Pillai
17 ,, Puthupalli S. Krishna Pillai
18 ,, T. Krishna Pillai
19 Rao Bahadur Dr. N. Kunjan Pillai
20 Mr. K. Kunjukrishna Pillai
21 ,, E. K. Kunjuraman
22 ,, K. M. Kuriakose
23 ,, P. C. Kurian
24 ,, M. K. Madhavan Pillai
25 ,, Pacode A. Narayana Pillai
26 ,, S. Nilakanta Pillai
27 ,, Kayalam Paramesvaran Pillai
28 ,, M. Govinda Pillai
29 ,, V. Ramakrishna Panickar
30 Vaidya Sastra Kusala Dr. Mrs. M. Poonen Lukose
31 Mr. S. Thiraviam Nadar
32 ,, P. K. Thomas
33 ,, T. C. Thommen
34 ,, John Whitely Tolson
35 ,, T. P. Velayudhan Pillai

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NEUTRALS—4.

1 Mr. N. Abdur Rahiman Sahib	3 Mr. P. C. Narayanan Bhattatiripad
2 ,, A. Easwara Pillai (Kalkulam II)	4 ,, K. Padmanabhan

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): Sir, I beg to move the following amendment —

"In Clause 18, substitute the words "from time to time" for the words "not exceeding.....the deposit" in lines 6 and 7.

The Clause as amended will read thus:—

"Upon the certificate being filed, or a copy of it being produced, it shall be open to the creditor or any of the creditors to apply to the court to call upon the debtor to deposit in court the amount mentioned in the certificate as the fair amount for settlement by cash payment. Upon such application being made, the court shall order the debtor to make the deposit within such time as it may think reasonable from time to time."

Sir, the object of my amendment is this. According to this Bill, almost all reasonable facilities are given to the debtor. But when once the certificate has been awarded and if he is called upon to deposit the amount conciliated by the Board within three months from the date of the certificate, he may find it very difficult because he may not be able to raise the necessary amount at once. The depression is not lifted, and more or less we can say the depression has come to stay. If the debtor is not given sufficient and reasonable time to raise the money and deposit the amount, it is better not to give any opportunity at all. So, my submission is that the debtor should be allowed reasonable time. Whether a period is reasonable or not depends upon the merits of each case. In one case, it may be possible for a debtor to raise and deposit the amount within two months. In certain other cases, he will not be able to raise the amount in a period of three months. He may require some time more. So I think it is better to allow the discretion to vest in a court. The original Bill also contains the same expression.

"Upon the certificate being filed, or a copy of it being produced, it shall be open to the creditor or any of the creditors to apply to the court to call upon the debtor to deposit in court the amount mentioned in the certificate as the fair amount for settlement by cash payment. Upon such application being made, the court shall order the debtor to make the deposit within such time as it may think reasonable from time to time".

So the provision in the original Bill was also one similar to mine. Therefore I think it is proper to retain that expression so that it will give some discretion to the court to fix the period according to the merits of each case.

DEPUTY PRESIDENT: So you want the words in the original Bill to be restored?

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): Yes.

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. The scheme of the Clause is this. When the Board records a certificate, it will say what is a fair amount

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[Mr. Kayalam Paramesvaran Pillai.]

to be paid to the creditor if it is to be paid forthwith. That certificate may or may not be accepted by the creditor. If he does not accept the certificate, he will not take action under Clause 19. If he accepts the certificate, he will make an application to the court; and if the amount is deposited within three months, then it will be in full discharge of the entire debt. The amount that the debtor is asked to pay forthwith is taken to be the reasonable amount having regard to the time when the application is being made and when the certificate was recorded. It is provided that, if the creditor puts in an application, the debtor may deposit that amount without any interest and the deposit so made will be considered to be in full discharge of the amount due to the creditor. Of course, the creditor is not bound to make this application. The object of the framers of this clause is that, as far as possible, we must give an inducement to the creditor to go and make the application because of the inducement of immediate payment. To make it an inducement to the creditor, he should be given the assurance of payment within the minimum time possible. The maximum time proposed by the clause is three months. If the House wants that the creditor should not be given such inducement of speedy payment, then this amendment may be accepted.

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): What I say is that the discretion should be left to the court.

The amendment was put to the vote and lost.

The question that Clause 18 do stand part of the Bill was then put and carried.

The Clause was added to the Bill.

Clause 19.

MR. P. C. KURIYAN (*Kottayam I*): Sir, I beg to move the following amendment: –

In Clause 19, substitute the following in lines 3 to 10:

"such court shall disallow in whole the cost of the suit or the application as the case may be, and shall also reduce the amount of the interest remaining due for the period from and after 1st Chingam 1105 up to the date of the decree or order on the application, as the case may be, reducing the rate of interest to four per cent. per annum."

The Clause as amended will read thus:—

"If in respect of any debt covered by the certificate of the Board, the creditor institutes a suit or makes an application (not being an application under Section 18) such court shall disallow in whole the cost of the suit or the application as the case may be, and shall also reduce the amount of the interest remaining due for the period from and after 1st Chingam 1105 up to the date of the decree or order on the application, as the case may be, reducing the rate of interest to four per cent per annum."

I wish to draw the attention of this House that, unless a provision similar to this is passed, all our labours will be like the mountain in labour producing but one mouse. In spite of all the argument of the Law Member, I must confess I was not able to follow him for, in one breath he will say conciliation will be compulsory and in another breath he will say that there should be some sort of compulsion.

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DEPUTY PRESIDENT: Did he really say that?

MR. P. C. KURIYAN (*Kottayam I*): So many times.

DEPUTY PRESIDENT: He said there should be a compromise between conciliation and compulsion.

MR. P. C. KURIYAN (*Kottayam I*): I am one who believes that, without at least some indirect compulsion, no creditor is voluntarily going to give up one pie due to him. The whole trouble, as far as I have understood, necessitating such a legislation like this, has arisen on account of the economic depression which does not enable a debtor to pay interest agreed upon during this period of depression. But for this fact, there would not have been the necessity for such a Bill like this. That is to say, if the debtors were really able to pay interest agreed upon which may be 12 per cent. nobody will come forward with a Bill like this. The agriculturist has not been in a position to pay interest during the last 5 or 6 years and only if he is given some relief for the accumulated debt he would get relief. And if we are going to give relief, we must give relief ere long. After the Board has come to a decision, the creditor says that he has not agreed; and if the matter is then allowed to go to a court, all the proceedings, the certificate and other things, will be adjudicated upon by the court; and the court will allow the whole or part or 4 per cent. interest. In that case, I fear, there will not be an end of the matter. Once the matter goes to the Civil Court, there is the right of appeal and second appeal. By the creation of the Boards we have admitted that the present courts are not able to administer justice upon the indebtedness of agriculturists. We are therefore constituting a special system of law to be administered through these Boards on whose decision no appeal lies. So with all our labours and the large amount Government have spent upon this we are not able to pass this Bill; it would not even justify the issue of the Proclamation by His Highness the Maharaja. We must not waste any more time in administering relief. I am not going to deny anything to the creditor. But if he is not going to abide by the decision of the Board, he must know that, if he goes to the Civil Court, he is not going to get more than 4 per cent. for debts from 1105.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the interest that is provided in the contract is 3 per cent. will it not happen that the creditor gets more than the stipulated interest under this amendment?

MR. P. C. KURIYAN (*Kottayam I*): It might. But I do not think it will.

MR. K. R. ELENKATH (*Kalkulam I*): Even under the Clause as it is, will not creditor be able to get 4 per cent. or one-half of the stipulated rate whichever is higher?

MR. P. C. KURIYAN (*Kottayam I*): There are inconsistencies in the amendment as proposed by the Select Committee. There is the provision that they may reduce the interest to 4 per cent. or to one-half of that stipulated rate whichever is higher.

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DEPUTY PRESIDENT: Is that an inconsistency? There is nothing inconsistent in saying whichever is higher.

MR. P. C. KURIYAN (*Kottayam I*): Supposing the agreed rate is 3 per cent. Half will be 1½ per cent. But according to the Bill, whichever is higher means 4 per cent.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): If it is 3 per cent. could it not be reduced to 4 per cent?

MR. P. C. KURIYAN (*Kottayam I*): No. It ought to be either reduced it to 4 per cent. or to half the original rate.

DEPUTY PRESIDENT: Anybody seconding?

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. Perhaps, the most plausible criticism that may be levelled against the provisions of the Bill is that, even though conciliation is purely voluntary, the Board may award a certificate with the result that if, subsequently, the creditor institutes a suit in respect of the debt, the court may disallow cost of the suit or reduce the interest due from 1105. The reply to this criticism is that it is always left to the discretion of the court. The court looks into the matter, considers all aspects of the question and says whether the costs will have to be forefeited or interest reduced. If Mr. Kuriyan's amendment is accepted, that makes it obligatory on the part of the court to make the party forfeit his costs and interest in every case. I think that that will be too drastic a provision. If it is left to the discretion of the court, the court will exercise it properly. It is wrong to make it compulsory on the court.

DEPUTY PRESIDENT: Do you press the motion?

MR. P. C. KURIYAN (*Kottayam I*): I press it.

The motion was put to vote and lost.

MR. S. J. NAIR (*Nedumangad*): I beg to submit to the Chair that Amendments Nos. 169 and 176 standing in my name go together.

DEPUTY PRESIDENT: You want these to be combined?

MR. S. J. NAIR (*Nedumangad*): Yes, Sir.

DEPUTY PRESIDENT: Combine them and please read it to the House?

MR. S. J. NAIR (*Nedumangad*): Sir, my first amendment is:—

"In Clause 19. line 7, for the words "for the period from and after 1st Chingom 1105 up to" substitute the word "on".

The second is:—

"In Clause 19, lines 8 to 10, for the words "any rate ——— is higher "occurring after " interest to" substitute "4 per cent. per annum".

When these two motions are accepted, Clause 19 would read as follows:—

"If in respect of any debt covered by the certificate of the board, the creditor institutes a suit or makes an application (not being an application under Section 18 (in any civil court, such court having regard to the certificate and the conduct of the parties in connection therewith may, in its discretion, disallow in whole or in part the costs of the suit or of the application, as the case may be and may also in its discretion reduce the amount of the interest remaining due on the rate of the decree or order on the application, as the case may be by reducing the rate of interest to 4 per cent. per annum."

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Sir, as the Clause now stands, it would appear that the rate of interest which a court may allow is 4 per cent. but the court is at perfect liberty to stipulate a higher rate or 4 per cent. whichever is higher.

DEPUTY PRESIDENT: How can the court stipulate? The Court can direct.

MR. S. J. NAIR (*Nedumangad*): So I submit that no such discretionary power should be given to the court against the interest of the debtor. If the interest of the debtor is to be safe-guarded, my idea is that the court cannot direct any interest higher than 4 per cent. and the court's discretion must be only up to 4 per cent.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): May I request Mr. S. J. Nair to explain the effect of his amendments?

MR. S. J. NAIR (*Nedumangad*): If a party, against the certificate of the Conciliation Board, rushes to the court of law for remedy he must as a penalty be compelled to forfeit not only interest for the period from 1105 but also for the whole amount due to the creditor under the conciliation certificate.

DEPUTY PRESIDENT: Anybody seconding?

Nobody seconded.

DEPUTY PRESIDENT: So the amendment falls to the ground.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I move the following amendment:—

In Clause 19, add "if the debtor deposits, on or before the date of the first hearing of the suit or the application, as the case may be, the amount fixed in the certificate as the amount for settlement by cash payment together with interest thereon at six per cent. per annum from the date of the certificate to the date of the deposit" after the words "in its discretion" in line 4.

I would submit, Sir, the reason for the amendment. In Clause 19 the court is given powers to disallow costs and interest if the certificate of the Board is not accepted by the creditor. But, will the debtor at least accept the certificate? The object of my amendment is to see that the creditor is not penalised if the debtor is recalcitrant and does not deposit in court at least the amount covered by the certificate. That is, if the debtor deposits in court the amount mentioned in the certificate, then the creditor may be penalised. But where the debtor himself has not accepted the certificate of the Board, *i. e.* does not deposit in cash the amount fixed by the Board, what is the remedy? In that case I ask why should the creditor be penalised. If the certificate of the Board is to be binding on the creditor, I ask why should it not be binding on the debtor also? And what is the certificate? The certificate says that the debtor should pay to the creditor a certain amount in cash having regard to all the circumstances, in satisfaction of the debt.

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[Mr. R. Sambasiva Aiyar.]

I shall read Clause 18 :—

"Upon the certificate being filed or a copy of it being produced, it shall be open to the creditor or any of the creditors to apply to the court to call upon the debtor to deposit in court the amount mentioned in the certificate as the fair amount for settlement by cash payment. Upon such application being made, the court shall order the debtor to make the deposit within such time as it may think reasonable not exceeding in any case three months from the date of the order to make the deposit. The deposit so made in such time shall be deemed to be in full settlement of such claims of the creditor as are dealt with in the certificate.

Explanation :—The deposit so made shall not be liable to be proceeded against for the claims of any other person against the debtor."

All the above conditions have to be satisfied. It must be cash payment, immediately made, in full settlement. If a creditor sues in a court of law and does not care to apply, under Clause 18, for the deposit of the amount, he is sought to be penalised by Clause 19. If the debtor deposits in court the amount specified on or before the date of the first hearing, the court may be given the power to refuse the costs of the creditor. Sir, we all know the ordinary rule of law that, if the defendant, in a money suit, proves that he has made a valid and legal tender, of the amount due, before the date of suit and also deposits the amount before the date of the first hearing, the plaintiff will not be entitled to his costs and will also be liable to pay the costs of the defendant. Sir, I have no objection for the same principle being embodied in this Bill also.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Without knowing whether the creditor will be prepared to accept the conciliated amount or whether he would drag the debtor to a civil court, what is the incentive for the debtor to find out the amount mentioned in the certificate and to deposit it?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): If it is merely a question of an incentive, he will not be liable for the costs. He need not pay the costs of the plaintiff.

Sir, I thought every honest man would pay back his debts. I do not think anybody would like to encourage a person who is unwilling to pay back his debts. Sir, in the cases contemplated by the amendment, the board has decided that the debtor is able to pay, and has also fixed the amount that he is to pay. They also direct that the amount must be paid in cash immediately in full settlement.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): But will the creditor accept the amount adjudged by the Board?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): If he does not accept it is he that suffers. He loses his costs and interest; and the debtor is thereby benefited.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the creditor has no objection to accept the amount fixed by the Board, why not he make an application under Clause 18?

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I am now dealing with the question as to the circumstances under which alone the creditor can justifiably be mulcted of his costs. In deciding that, it is not merely the conduct of the creditor that we should consider, but also the conduct of the debtor. Let us take it that the conduct of the creditor is reprehensible. But, if the conduct of the debtor also is equally reprehensible, why should we allow him an unfair advantage over the creditor?

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): May I know from the member what his point is?

DEPUTY PRESIDENT: That certainly is not in order. Mr. Sambasiva Aiyar thinks that there is point in his argument; and, if there was no point in it, the Chair would not have allowed him to proceed.

MR. R. SAMBASIVA AIYAR ((*Kunnatnad II*): My humble submission, Sir, is that the creditor should not be mulcted of his costs if the debtor does not deposit in court at least the amount mentioned in the certificate.

MR. K P. KRISHNA MENON (*Parur*): I second the amendment.

MR. KAYALAM PARAMESVARAM PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment, Sir. First of all, there is no point in saying that the debtor must deposit the amount in court even though the creditor is not prepared to accept it in full settlement. If the creditor is really prepared to accept it, I cannot see what prevents him from making an application under Clause 18. So long as the creditor is not prepared to accept the amount in full settlement, what will happen if we compel the debtor to deposit the amount in court is this; the creditor will draw the amount from court and also proceed with his suit against the debtor, for the balance due. Sir, when we throw an obligation on one party, we must also throw a corresponding obligation on the opposite party. If the debtor is obliged to deposit the amount, the creditor also must be obliged to accept it in full settelment. So long as the creditor is not obliged to accept it, there is no justice in compelling the debtor alone to make the deposit.

Secondly, Mr. Sambasiva Aiyar argues that once we look into the conduct of the creditor, we must also look into the conduct of the debtor. Sir, the conduct of the debtor will surely be looked into by the court; and all that the creditor need do is to tell the court all about it.

I see no reason, Sir, why this amendment should be accepted.

The amendment was put to vote and lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I beg to move the following amendment:—

In Clause 19, substitute "reduce or disallow interest from the date of the certificate till the date of the decree or order on the application as the case may be" after the words 'in its discretion' in line 6.

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[Mr. R. Sambasiva Aiyar.]

The punishment prescribed for a creditor who does not accept the certificate is that the court may, in its discretion, disallow costs or reduce interest. But the provision in the Bill says that such reduction of interest is to operate retrospectively. The Board can reduce the interest remaining due, for the period from and after the 1st of Chingom 1105 up to the date of the order reducing the rate of interest. My amendment is based on the authority of the Law Member himself; because, in the Bill as he introduced it, the provision was the same as is contained in my present amendment.

DEPUTY PRESIDENT: That is only provisional authority. It has suffered in the light of the opinion of the Select Committee.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): It was the Select Committee that changed the provision in the original Bill and made it retrospective.

If the Law Member's original provision is only provisional authority, Sir, I shall quote a more definite authority, namely, similar legislative enactments in the Punjab, in the C. P., in the U. P., and in Madras. In all these places, the punishment prescribed for a creditor who does not accept the certificate is that interest is not allowed from the date of the certificate to the date of the decree or order. I presume that the Law Member, when he drafted this Bill, had these legislative enactments in his mind.

Sir, retrospective legislation is certainly not commendable except in extraordinary circumstances like war, and even then compensation is usually paid. It cannot be said that there is any such situation here now. After all, there is nothing but some kind of agitation set up by certain disgruntled planters. To me, it seems that there is nothing to justify the importance that the Government have given to this agitation. Government seem to have got frightened by it.

DEPUTY PRESIDENT: Although I do not want to interrupt Mr. Sambasiva Aiyar, I feel bound to say that, whatever may have been the attitude of Government when the Law Member introduced this Bill, there is the undeniable fact that a strong Select Committee of 23 members, most of whom were non-officials not under the pay of Government, has been responsible for the form in which the measure is now before the House. Therefore, the statement made that Government were frightened by an agitation does not serve any purpose.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I only mentioned it casually, Sir. My real point is that the present situation does not at all warrant retrospective legislation. Under similar conditions, in various British Indian Provinces, they have only provided that, as a punishment for not accepting the certificate, the creditor should lose interest only from the date of the certificate till the date of decree or order. I am aware, Sir, that in those enactments, it is also provided that, if the debtor deposits the amount in court, the court shall disallow the costs of the the plaintiff. My previous amendment, relating to that matter has been thrown out by this House; and therefore I do not propose to dilate upon that point now.

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Since the provision in the Bill, as it is, amounts to retrospective legislation, I request the House to accept my present amendment.

MR. K. P. KRISHNA MENON (*Parur*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I oppose the amendment. At the same time, I would mention that it is an important point to which I would invite the particular attention of the House. It is no doubt true that in other enactments, as pointed out by Mr. Sambasiva Aiyar, the penalising relates only to interest that may accrue from the date of the certificate to the date of the decree. And, as observed by Mr. Sambasiva Aiyar, that was my original proposal too. The Select Committee decided to enlarge it a bit or perhaps substantially and on a consideration of it, I have decided to accept it. The real defect in the proposal that the party need suffer only interest from the date of the certificate to the date of the decree is this. Practically, it may amount to no suffering at all, because the creditor has only to institute a suit forthwith and if he is also vigilant in regard to getting a decree at once, all the interest that he may have to lose will be the interest for some, say, three months if he could get a decree by that time. That, the committee evidently considered, was too light a penalty to impose on a person for disregarding the decision of the Board.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Does the Law member think that the condition of the agriculturists in Travancore is much worse than that of the agriculturists in the neighbouring British Indian Districts ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : The point is not exactly that the conditions are different here from what they are in British India. The real question for consideration will be whether when a board thinks it desirable to record a certificate because the board, though it is not bound to record it, thinks that it has ample material before it, should we not give sufficient respect to that certificate ? But are we showing a sufficient respect to it if we simply provide for reduction of interest from the date of the certificate ? That may mean nothing in actual fact. If you want to give respect to the certificate of the board, there must be some substantial penalty. That is why it is provided in the Bill as revised that he should suffer interest from the 1st Chingom 1105 till the date of the decree.

Another reason why the year 1105 was put in is that it is from 1105 that the prices of commodities went down. The wherewithal with which the debtor should pay the interest went down in price from that year. That is one reason why the creditor may be asked to be satisfied, for some good reason, with reduced interest from that year. But above all these things, the material consideration is that there must be some substantial suffering inflicted on the creditor if he is not prepared to accept the certificate, and, that object will not be achieved if one makes the section apply to interest arising only from the date of the certificate. I therefore oppose the amendment.

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[Mr. Kayalam Paramesvaran Pillai.]

The amendment was put to the vote of the House and declared lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I beg to move—

In Clause 19 add "and interest from the date of the certificate till the date of the decree or order on the application as the case may be, and if the debtor deposits on or before the date of the first hearing of the suit, or the application, as the case may be, the said amount for payment to the credior together with the interest thereon at six per cent. per annum from the date of the certificate to the date of the deposit, the court shall disallow all costs of the suit or the application as the case may be, and any other interest from the date of the certificate till the date of decree or order on the application as case may be" after the words 'as the case may be' in line 6.

DEPUTY PRESIDENT : I presume that the reasons advanced by Mr. Sambasiva Aiyar when the previous amendment was moved will in a very great measure be available to this also.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I promise that I shall not repeat them. I shall mention only such of those as strike me as new.

Here, Sir, in some respect it may be considered that I have gone even in advance of the Select Committee report. Sir, here I have provided a set of circumstances in which the creditor shall be disallowed costs and shall be disallowed interest for a certain period. After all, the Select Committee gives the discretion to the court in each case. But I have gone even much farther than what is contained in the Select Committee report and have provided for a contingency in which the creditor *shall b* deprived costs and *shall be* deprived of interest. That contingency, Sir, is this:—

> "If the debtor deposits on or before the date of the first hearing of the suit, or the application as the case may be, the said amount for payment to the creditor together with interest thereon at six per cent. per annum from the date of the certificate to the date of the deposits, the court shall disallow all costs of the suit, or application as the case may be, and any other interest from the date of the certificate till the date of the decree or order on the application as the case may be".

This, Sir, I may say is practically word for word, the expression that is used in the original Bill. Only I have added the words 'or the application as the case may be'. Those words were omitted in the original Bill but were added by the Select Committee. But these are practically the words of the mover of the original Bill. I submit, Sir, even this would be better because there is a hope that the creditor can see the colour of his cash. Therefore, I recommend, Sir, this amendment to the acceptance of the House.

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAN PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment for the chief reason that this amendment again touches only the interest due from the date of the certificate to the date of the decree which, as I explained on a previous

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occasion, may not after all mean much. Secondly, I would say that this is really a consequential amendment to some other amendment which has perhaps been thrown out, because it refers to—'the *said* amount. So far as I can see, this cannot refer to any of the provisions that have been accepted by the House till now. Hence it can only mean that it refers to an amendment that has been thrown out. Therefore, this also must be thrown out.

The amendment was put to the vote of the House and declared lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I demand a poll. It is not for every amendment of mine that I am asking for a poll.

DEPUTY PRESIDENT: I do recognise that, if a member entertains any doubt as to the number of votes, he may demand a poll. But in a matter like this, especially when the difference is so great and when the difference on similar questions in this House today was equally pronounced, no poll was demanded and taken, unless you insist on having it, I am inclined not to allow one.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I withdraw my request.

MR. K. PADMANABHAN (*Chirayinkil I*): Sir I move:

In Clause 19, line 6, delete the words "the amount of" : and in line 8, delete the words "by reducing the rate of the interest".

Sir, the latter part of this clause is not quite happily worded. I mean to say that it is a little verbose. The portion reads—

> "the amount of the interest remaining due for the period from and after 1st Chingom 1105 up to the date of the decree or order on the application, as the case may be.....".

Sir, the idea sought to be conveyed is to give a discretion to the civil courts to reduce the rate of interest from a particular period. If my amendment is accepted, the clause will read thus—

> "reduce the interest remaining due for the period from and after 1st Chingom 1105 up to the date of the decree or order on the application as the case may be, to any rate.....".

So, my amendment would give a happier wording to the clause and also at the same time would make it less verbose. So, I believe this amendment will be accepted by the House.

MR. K. R. ELENKATH (*Kalkulam I*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): Sir, I oppose it, I would only say that 23 members in the Select Committee have supported this wording.

The amendment was put to the vote of the House and declared lost.

MR. K. PADMANABHAN (*Chirayinkil I*): I demand a poll.

DEPUTY PRESIDENT: You are very particular in having it?

MR. K. PADMANABHAN (*Chirayinkil I*): Yes, Sir.

A poll was accordingly taken with the following result:—

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AYES—3.

1 Mr. K. R. Elenkath.
2 ,, S. Nilakanta Pillai
8. Mr. K. Padmanabhan

NOES—44.

1 Mr. N. Abdur Rahiman Sahib
2 ,, V. T. Chacko
3 Rao Sahib S. Parameswara Aiyar
4 Mr. M. Mahomed Haneef
5 ,, S. J. Nair
6 ,, A. Thanu Pillai
7 ,, John Whitely Tolson
8 ,, Antony George
9 ,, J. M. Joseph
10 ,, P. C. Kuriyan
11 ,, N. John Joseph
12 ,, T. C. Joseph
13 ,, T. T. Kesavan Sastri
14 ,, K. M. Krishnan
15 ,, T. Krishna Pillai
16 ,, E. K. Kunjuraman
17 ,, K. Mahomed
18 ,, K. M. Kuriakose
19 ,, K. Madhavan
20 ,, V. Ramakrishna Panickar
21 ,, R. Raman Pillaai
22 ,, P.K. Thomas
23 ,, T. C. Thommen
24 ,, K. N. Kesava Pillai
25 ,, G. B. E. Truscott
26 Mr. Kayalam Parameswaran Pillai
27 ,, K. George
28 Rao Bahadur Dr. N. Kunjan Pillai.
29 Mr. M. Govinda Pillai
30 Dr, (Mrs.) M. Poonen Lukose
31 Mr. K. Kunjukrishna Pillai
32 ,, Puthupalli S. Krishna Pillai
33 ,, A. S. Damodaran Asan
34 ,, Pacode A. Narayana Pillai
35 ,, A. Easwara Pillai (*Kottarakara*)
36 ,, R. Sivaraman Nair
37 ,, Kainikkara M. Padmanabha Pillai
38 ,, Edavanatt S. Padmanabha Menon
39 ,, Pottayil S. Krishna Panickar
40 ,, M. K. Madhavan Pillai
41 ,, M. K. Janardhana Kammath
42 ,, V. K. Velappan Nair
43 ,, T. P. Velayudhan Pillai
44 ,, G. Nilakantan

NEUTRALS—9.

1 Mr. P. C. Narayanan Bhattatiripad
2 ,, K. P. Krishna Menon
3 ,, T. S. Jayantan Namputiri
4 ,, S. Chattanatha Karayalar
5 ,, K. C. Karunakaran
6 Mr. R. Sambasiva Aiyar
7 ,, S. Thiraviam Nadar
8 ,, N. E. Varghese
9 ,, A. Easwara Pillai (*Kalkulam II*)

The amendment was declared lost.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*) : Sir, I beg to move the following amendment ;—

In Clause 19, substitute the words "the maximum rate allowable being not higher than either one-half of the stipulated rate or four per cent. per annum whichever is lower" for the last two lines".

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The clause, as reported by the Select Committee, I fear, would mean that a loan which was contracted at an interest of 3 per cent. will require the debtor to pay 4 per cent. interest. I fear so, because the minimum interest allowed is 4 per cent.

DEPUTY PRESIDENT: According to you it is a question of words.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Not only words. It must be—'whichever is less'. For that purpose, I move this amendment. I do not want to dilate upon this fact. If the Law Member thinks is worth while to consider it, let him accept it or let him reject it.

MR. S. J. NAIR (*Nedumangad*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am afraid I cannot accept this amendment. I cannot quite follow the amendment. I believe that the meaning of the clause is not intended to be changed even under the amendment.

MR. S. J. NAIR (*Nedumangad*): Sir, I withdraw my seconding. I wanted to second only No. 177 and not 177 A.

DEPUTY PRESIDENT: When an Honourable Member of this House, present at the time of discussion, lends his support to a motion before the House, the presumption is that he knows distinctly what he is doing and appreciates what he does. I observed from the Chair in the hearing of all the members, for I speak sufficiently loud, that the motion under consideration was 177 A and not 177. Mr. Raman Pillai also said that. I think, therefore, that Mr. S. J. Nair could have been more discreet in giving his support. Anyhow, let us pass on. Do not repeat such mistakes. It will be putting this House in an awkard position. I, therefore take it that at the time that Mr. S. J. Nair lent his support he meant amendment No. 177 A, and nothing that he states now can be heeded to.

MR. S. J. NAIR (*Nedumangad*): A word of explanation, Sir, I distinctly heard the Law Member say that in clause 19 the last word "higher" should be "lower". From the nature of the information given to me I thought it was No. 177 and not No. 177 A.

DEPUTY PRESIDENT: Anyhow I consider that you seconded the amendment. The House is siezed of that. I refuse to reconsider that.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Does the amendment mean that, if a person stipulates for, say, 5 per cent. he should, according to the amendment, get only $2\frac{1}{2}$ per cent.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Suppose the stipulated rate of interest is 4 per cent. Therefore according to the clause, half that interest will be 4 per cent. because it says "whichever is higher". Again suppose the stipulated rate of interest is 3 per cent; half of that according to my amendment will be only one and a half per cent. whereas according to the clause it will be four per cent.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): This amendment may not achieve it. I am however prepared to consider the point raised.

The amendment was by leave withdrawn.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, my amendment is as follows:

Add the following as proviso to Clause 19:

"Provided that the Court shall not disallow costs or reduce any portion of the interest in respect of any debt incurred after the 1st Chingom 1105 M. E.

Sir, I could not give notice of this in sufficient time because this amendment arose in view of certain amendments accepted by this House. My motion is to the effect that the discretion vested in the court to disallow costs or reduce interest should not be exercised in the case of those cases arising after 1105. In the case of debts after 1105, monies were advanced after the depression began. Therefore in those cases the court should not be given discretion to disallow costs or reduce interest.

DEPUTY PRESIDENT: I think your amendment is a belated one. Yesterday I heard the President observing that ordinarily no late amendments should be allowed; not that I am not prepared to consider any amendment on its own merits. But when Mr. Sambasiva Aiyar and others had notice of this direction given by the President, I cannot understand why they should put off giving notice of amendments till the eleventh hour.

MR. A. THANU PILLAI (*Trivandrum—Rural*): When there is no objection, cannot the President allow it?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I explain, Sir? I sent in this amendment in the light of certain motions that have been passed in this House. I request that I may be permitted to move this amendment.

DEPUTY PRESIDENT: Mr. R. Sambasiva Aiyar wants to move his amendment on the ground that it is necessary because the House has accepted certain propositions today. Mr. Thanu Pillai has enquired whether the Chair has got the power to refuse permission when there is no opposition to the amendment on the part of any member of the House. As at present advised, I say that the Chair has got the authority whether opposition is taken by any member or not. The point raised by Mr. Sambasiva Aiyar is an important one, and, as an exceptional case, I am prepared to allow him to put his point before the House in a very short speech.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*). I will take only a very short time. I only request that the House will be kindly pleased to direct its attention to Chapter VIII of the Report of the Debt Redemption Committee. The Committee drew a definite distinction between debts incurred prior to 1105 and those incurred after 1105. The debts incurred prior to 1105 belong to the pre-depression period and those incurred after 1105 to the post-depression period.

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Therefore we ought to make a distinction between a creditor who paid money when money was so cheap and the creditor who advanced money when it was so dear. Therefore my object is that a distinction should be maintained between these two class of debts.

MR. K. P. KRISHNA MENOM (*Parur*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No doubt, a distinction can be drawn between debts that arose after 1105 and those before 1105. But here the question is whether the creditor is prepared to accept the certificate recorded by the board and if not what is the penalty that shall be imposed for it. That penalty is made to relate to the interest from 1105 to date of the decree, and it is during this period that the return on monies advanced has gone down. Therefore I think that there is no hardship in reducing interest as proposed in the clause.

The motion was put to vote and lost.

Then the question that Clause 19 do stand part of the Bill was put to vote.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Sir, I have an amendment.

DEPUTY PRESIDENT : Mr. Sambasiva Aiyar has no right, for I got up and said that the question was that Clause 19 do form part of the Bill. Mr. Sambasiva Aiyar did not respond then.

The question that Clause 19 do stand part of the Bill was then put to vote and carried and the clause added to the Bill.

Clause 20.

DEPUTY PRESIDENT : The question is that Clause 20 do stand part Bill .

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I had given notice of an amendment.

DEPUTY PRESIDENT : When, please.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : During the course of the day. I shall explain. If the Chair thinks it material, my amendment can be moved. All that I have to say is that I may be permitted to move it and have my say. Whether it is carried or not is no concern of mine.

DEPUTY PSESIDENT : The difficulty will be that if at this stage the amendments are admitted without a principle, that will be setting a premium on others so that, in effect, the President's direction will be whittled down.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : A word of explanation, Sir.

DEPUTY PRESIDENT : In this case also it is after I got up and said, "now the question is that Clause 20 do stand part of the Bill" that Mr. Sambasiva Aiyar rose up. Therefore I regret I cannot allow that.

The question that Clause 20 do stand part of the Bill was then put to vote.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I oppose.

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The question that Clause 20 do stand part of the Bill was put and carried and the Clause was added to the Bill.

Clause 21.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I move the following amendment:—

In Clause 21, line 2, substitute the words "from any person in respect of the same debtor" for "from the same person"

A debtor may have various creditors. Any creditor can file an application for conciliation of debts according to the Clause already passed. First time when the application is sent up, an enquiry will be made. Another creditor will again put up an application for conciliation. That too will be enquired into. A third creditor can repeat the same matter So much so, each creditor has got a right of putting in applications. A lot of expenditure is involved. At no time is a final conclusion possible. Further, the object really aimed at by the Clause will be frustrated. Hence I suggest this amendment.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): I accept the amendment. Conciliation is always in regard to a debtor. By means of the conciliation, the assets and liabilities of one debtor are adjusted. Such being the case, when a conciliation has been made once, another creditor should not reopen it in respect of the same debtor. Such a provision would be a wholesome rule; and if the House is agreeable, I am prepared to accept the amendment.

The amendment was then put to vote and carried.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): There is a consequential amendment. I move that in line 2 for the words "a second" substitute the word "an".

MR K. GEORGE (*Land Revenue and Income Tax Commissioner*): I second it.

The amendment was then put to vote and carried.

DEPUTY PRESIDENT: Now the question is that Clause 21 as amended do stand part of the Bill.

The motion was put and carried and the clause as amended was added to the Bill.

Clause 22.

MR. K. PADMANABHAN (*Chirayinkil I*): I move the following:

In Clause 22, Provisio, line 1, substitute "whenever" for "wherever" and in line 2, substitute "whenever" for the word "wherever"

The expression "wherever" in Clause 22, does not convey any sense. We are not concerned with any place at all. It is already

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granted that the question may arise either before a court or board. Then we are concerned with time. Therefore "whenever" is to be substituted.

In this, I am also supported by a precedent. In Clause 16, sub-clause (2) Proviso, the expression used is "whenever". This is only a verbal alteration; but all the same it means much. The Law Member, who is very anxious to defend the prestige of the Select Committee, I hope, will not raise any objection to this.

DEPUTY PRESIDENT: Up to this, you are right. The latter part of your argument does not arise.

MR. K. PADMANABHAN (*Chirayinkil I*): But, Sir, I anticipate objection from the Law Member.

DEPUTY PRESIDENT: You are quite in form up to that. Why should you anticipate difficulties?

MR. K. PADMANABHAN (*Chirayinkil I*): From my experience I have to anticipate possible objections from the Law Member. So I request the members of the House, including the Law Member, to accept my suggestion.

MR. S. J. NAIR (*Nedumangad*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): "Wherever" means in whichever cases. It is not a question of place and time. "Wherever" is readily understood.

MR. K. PADMANABHAN (*Chirayinkil I*): Then, how did that expression "whenever" arise in Clause 16, Proviso to sub-clause (2).

DEPUTY PRESIDENT: In statutes such language occurs.

MR. K. PADMANABHAN (*Chirayinkil I*): Does not that expression denote, where the matter comes to be settled?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): No.

The amendment was then put to vote and lost.

MR. K. PADMANABHAN (*Chirayinkil I*): I demand a poll; simply because this is a simple –

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): On a point of order. When a poll is demanded, can the member say his reasons?

DEPUTY PRESIDENT: No. What I said some time ago will apply to this case as well. There are only 2 or 3 people who voted for Mr. Padmanabhan. If there is something in the margin, I can understand a poll being asked.

MR. K. PADMANABHAN (*Chirayinkil I*): May I explain, Sir.

DEPUTY PRESIDENT: I would request Mr. Padmanabhan to reconsider the matter. The only question is this. If Mr. Padmanabhan, notwithstanding the appeal that I made to him from the Chair, is not agreeable to drop it, I am prepared to allow a poll.

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MR. K. PADMANABHAN (*Chirayinkil I*): It is just because I—

DEPUTY PRESIDENT: I want an answer 'yes' or 'no'

MR. K. PADMANABHAN (*Chirayinkil I*): I definitely want a poll, Sir.

A poll was taken with the following result:—

AYES—2.

1 Mr. S. J. Nair	2 Mr. K. Padmanabhan

NOES—47.

1 Mr. N. Abdur Rahiman Sahib	27 Mr. T. C. Thommen
2 ,, V. T. Chacko	28 ,, K. N. Kesava Pillai
3 Rao Sahib S. Parameswara Aiyar	29 ,, G. B. E. Truscott
4 Mr. M. Mahomed Haneef	30 ,, Kayalam Parameswaran Pillai
5 ,, P. C. Narayana Bhattathiripad	31 ,, K. George
6 ,, A. Thanu Pillai	32 Rao Bahadur Dr. N. Kunjan Pillai
7 ,, S. Chattanatha Karayalar	33 ,, M. Govinda Pillai
8 ,, John Whitely Tolson	34 Vaidyasastra Kusala Dr. (Mrs.) M. Poonen Lukose
9 ,, K. C. Karunakaran	35 Mr. K. Kunjukrishna Pillai
10 ,, A. Easwara Pillai (Kalkulam II)	36 ,, Puthupally S. Krishna Pillai
11 ,, Antony George	37 ,, A. S. Damodaran Asan
12 ,, J. M. Joseph	38 ,, Pacode A. Narayana Pillai
13 ,, P. C. Kuriyan	39 ,, A. Easwara Pillai (Kottarakara)
14 ,, N. John Joseph	40 ,, R. Sivaraman Nair
15 ,, T. C. Joseph	41 ,, Kainikkara M. Padmanabha Pillai
16 ,, T. T. Kesavan Sastri	42 ,, Edavanatt S. Padmanabha Menon
17 ,, K. M. Krishnan	43 ,, Pottayil S. Krishna Panickar
18 ,, T. Krishna Pillai	44 ,, M. K. Madhavan Pillai
19 ,, E. K. Kunjuraman	45 ,, N. E. Varghese
20 ,, K. Mahomed	46 ,, V. K. Velappan Nair
21 ,, K. M. Kuriakose	47 ,, T. P. Velayudhan Pillai
22 ,, K. Madhavan	
23 ,, V. Ramakrishna Panickar	
24 ,, R. Raman Pillai	
25 ,, K. P. Thomas	
26 ,, P. K. Thomas	

NEUTRALS—2.

1 Mr. K. P. Krishna Menon	2 Mr. R. Sambasiva Aiyar

MR. R. SAMBASIVA AIYAR (*Kunnainad II*): I request that I may be allowed to move a new amendment. The amendment is that "*Clause 2 : may be omitted*".

DEPUTY PRESIDENT: That is a clause which comprises some of the ideas already decided by the House, so that the deletion of the whole Clause will be out of order because the House has committed itself to certain opinions on some of the matters. So the amendment for the omission of the Clause will be out of order.

The question that Clause 22 stand part of the Bill was then put.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it.

The motion was passed and the Clause was added to the Bill.

Clause 23.

MR. K. PADMANABHAN (*Chirayinkil I*): I move the following amendment:—

In Clause 23, line 1, delete the words "or application for revision". and add the following Provisio :—

"Provided, however, that nothing in this Section will affect the revisional jurisdiction of the High Court to call for the records of any proceeding before a Conciliation Officer for the purpose of satisfying itself as to the legality of any agreement proposed or certificate recorded or order passed by such officer and as to the regularity of any proceeding before him and pass such order in the matter as the High Court thinks fit."

By this proviso I intend to confer a revisional jurisdiction on the High Court over the proceedings of the Conciliation Boards. By this legislation we are going to establish a novel body throughout the State having jurisdiction over the civil rights of this country. As to what sort of officers we are going to appoint, this House has no definite knowledge. That quasi-judicial body has to decide questions of facts as well as questions of law. According to the provisions contained in this Bill, the Board *may* decide or *may not* decide. It *may* take evidence or it *may not* take evidence. Even if it takes evidence, what law it is that it has to follow is not known. We are in the dark in regard to all those matters. Under such circumstances, it is reasonable that the highest judicial tribunal in the land should be invested with powers to revise proceedings of this Board. Otherwise, serious hardship and inconvenience may arise. With these observations, I commend the amendment to the acceptance of the House.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Should the High Court have jurisdiction to call for records on their own accord?

MR. K. PADMANABHAN (*Chirayinkil I*): Naturally just as in other cases; the High Court should revise the proceedings of the Conciliation Board on the motion of the parties or of their own accord.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I second this amendment. Even in small cause cases, the High Court has jurisdiction. If a Munsiff decides a small cause case, the High Court can interfere in revision with the judgement. But the jurisdiction of the conciliation board is unlimitted What I submit is that, in cases decided by conciliation boards, it should have revisionary jurisdiction. It is easy to say that after all the penalty that the creditor has to face is only very small. I submit that it is not small.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Has the High Court any power to revise the decrees passed by the Registrar or the arbitrators appointed by him in cases in which they award twice the principal and even 18 per cent. interest for the future?

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I do not think the High Court is able to do it. But there are other remedies. In all other cases a person who is aggrieved has a remedy. But here alone he has no remedy. It is wrong to say that the suffering is small. It is not small. It is a very heavy suffering for the creditor. If the High Court is vested with revisionary jurisdiction, that will be an effective check on the vagaries of the Conciliation Officer.

MR. N. ABDUR RAHIMAN SAHIB (*Nominated*): Will it not cause further delay?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Oh no. There will be no greater delay than now. But, on the other hand, if the High Court has a revisional jurisdiction over the conciliation board, the Conciliation Officer will try to see that things are expedited, and the High Court can advise the Conciliation Board as its subordinate court. Therefore I submit that it will be much better if the Section is amended as proposed by Mr. Padmanabhan.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): I oppose the motion. I would point out that there is no necessity at all under the provisions of this Bill for giving any power of revision to the High Court. First of all just consider what it is that the Board can do. The Board suggests an arrangement, the conciliation and that will be binding on the parties only if all of them agree. If they do not agree, what is the consequence? The Board will then give a certificate. And upon that, civil court which tries the case may order that the creditor shall suffer his cost or should give up a portion of the interest. Against such order of the court, there is a regular appeal to the District Court or the High Court. Whatever be the board's proceedings, they will ultimately go before a court, unless the parties agree to the proceedings and there will be an appeal also. So long as that appeal is available to the parties, there is no necessity for giving a power of revision to the High Court.

The second aspect is that the Board should function expeditiously. It should not be hampered by an appeal or revision at every stage. It may be that its decision goes wrong. But it should be allowed to function expeditiously. It should not be sought to be corrected from time to time. It is unnecessary and it will lead to delays.

The amendment was put to the vote of the House and lost.

The question that Clause 23 do form part of the Bill was then put

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose.

The motin was passed and the Clause was added to the Bill.

DEPUTY PRESIDENT: Before we proceed to the next business, I wish to point out this because a demand for poll was made from time to time even under circumstances under which the Chair did not think it absoluteiy necessary to allow it. Rule 62 on page 25 of the Manual says —

> "Votes may be taken by voice or division and shall be taken by division if any member so desires. The President shall determine the method of taking votes by division."

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Mark the words "The President shall determine the method".

In the Indian Legislative Assembly also, there have been occasions like this.

"The President declared "the Ayes have it" and, there being cries of "No", said: "The volume of sound for "Ayes" is so preponderating that I do not think a division is necessary."

Whereupon a member said that, under Standing Order 30 (2) even a single member was entitled to call for a division.

"The President observed: 'It is perfectly open to the President, if he is satisfied on the shout that there is a clear preponderance of opinion on one side and that the division is asked for frivolously and merely for purposes of delay, to refuse the demand for Division".

There are a number of cases like that. I do not want to characterise the attempt of any member of this House as frivolous. But I am obliged to point out that, when the results are certain, when the difference between one side and the other is so preponderating there is not much good gained by demanding a poll. I shall not take up the time of the House any more. But I may also refer to the practice of Parliament.

Divisions unnecessarily claimed :—

"It is in the power of the members, when a question is put from the chair, to compel the House to take a division thereupon; and experience proved the necessity of placing this power under some restraint. By the standing order of the 27th November, 1882, power was given to the chair, under certain restrictions, to take the vote of the House upon dilatory motions, such as a motion to adjourn a debate, by calling upon the members who challenged the decision of the chair, to rise up in their places. This standing order was repealed during the session of 1888. A standing order passed in that year and amended in 1919 provides that the Speaker or the chairman, if in his opinion a division is unnecessarily claimed, may take the vote of the House or committee by calling upon the members who support, and who challenge his decision, to rise successively in their places; and he, thereupon, as he may think fit, either declare the determination of the house or the committee, or name tellers for a division."

There is a latitude that way. We need not go far ahead in these matters, and I would appeal to the good sense of the members that, in cases where the votes are pronounced one or the other way, a demand for a poll may not be made.

The House will now adjourn and meet again at 11 A. M. tomorrow.

The House adjourned at 5-32 P. M.

K. MADHAVA KURUP,
Secretary to the Sri Mulam Assembly.

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